**IN THE HIGH COURT OF JUDICATURE OF BOMBAY**

**CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO.252 OF 2006
WITH
CIVIL APPLICATION NO.326 OF 2006

M/s.Jenco Industrial Corpn. ..Appellants.

V/s.

Municipal Corpn. of Gr.Bombay & ors. ..Respondents.

Mr.D.R.Shah with Mr.Sing for appellants.

Mr.Ketan Chothani i/b Vikrant K.Narkar for respondent No.3.

Mrs.Geeta Joglekar, for BMC.

**CORAM: A.M.KHANWILKAR,J**

**DATE : MAY 5, 2006.**

**P.C. :**

1. Heard counsel for the parties. Perused the documents on record.

2. The first contention canvassed before me is that the Corporation has not taken recourse to the procedure under section 297 of the Act before issuance of notice under section 299 of the Act, which is impugned in the suit before the trial Court. The argument seems to be attractive, but the learned counsel for the appellant on being confronted fairly accepts that no specific plea has been taken in the plaint regarding non-compliance of the particular

procedure referable to section 297 of the Act. If that case is not made out in the plaint or in the affidavit, the question of entertaining this grievance for the first time in this court across the bar does not arise.

3. The next point argued before me is that the Corporation has made reference to the plan of the road in the suit notice issued under section 299 of the Act. However, the Corporation has failed to furnish the document. This grievance clearly overlooks the fact that the suit notice issued under section 299 of the Act dated 31st March, 2003 itself provided opportunity to the appellant to take inspection of the relevant documents available in the office of Assistant Commissioner, P/South Ward during office hours. This was to be done within seven days from the receipt of the suit notice, which opportunity has not been availed by the appellant. Besides, the Trial Court during the pendency of the Notice of Motion gave opportunity to the appellant to take inspection of the relevant records available with the Corporation. That order was passed on 5th April, 2003. The appellant has not availed of even that opportunity. The grievance of the appellant of not furnishing the plan of the road is only to

protract the proposed action of the Corporation, which is for a public street. The portion of the suit property comes within the regular line of the public street.

4. Lastly, it was contended by Mr.Shah that notice under section 299 of the Act, in any case, will not authorise the Corporation to proceed to demolish the disputed structure. This apprehension is misplaced. The Corporation is bound to follow the Letter of Law before proceeding further. In other words, the Corporation is free to take further steps with regard to the disputed property in accordance with the law.

5. With this observation, the appeal is dismissed. Ad-interim relief granted is vacated.

6. Civil application disposed of accordingly.